

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:)	
)	
)	
THE FINANCIAL OVERSIGHT AND)	PROMESA
MANAGEMENT BOARD FOR PUERTO RICO,)	Title III
)	
as representative of)	Case No. 3:17-bk-03283 (LTS)
THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i>)	
)	
Debtors.)	

	X	
In re:)	
)	
)	PROMESA
THE FINANCIAL OVERSIGHT AND)	Title III
MANAGEMENT BOARD FOR PUERTO RICO)	
)	Case No. 3:17-bk-03566 (LTS)
as representative of)	
)	
THE EMPLOYEES RETIREMENT SYSTEM OF THE)	
GOVERNMENT OF THE COMMONWEALTH OF)	
PUERTO RICO,)	
)	
Debtor.)	

----- X

**OBJECTION OF MOVANTS TO THE EXHIBIT LISTS AND DECLARATIONS
OF THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT
OF THE COMMONWEALTH OF PUERTO RICO AND THE COMMITTEE
OF RETIRED EMPLOYEES OF THE COMMONWEALTH OF PUERTO RICO**

Pursuant to the Court's *Order Granting Urgent Joint Motion Regarding the Scheduling of Discovery and Briefing in Connection with the Motion of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico for Relief from the Automatic Stay* [Docket No. 6915 in Case No. 17-bk-03283 and Docket No. 505 in Case No. 17-bk-03566] and the *Order Approving Stipulation Between the Oversight Board, Movants and the Retiree Committee Regarding Certain Pre-Hearing Filing Deadlines* [Docket No. 7650 in Case No. 17-bk-03283 and Docket No. 593 in Case No. 17-bk-03566], Movants,¹ by and through their undersigned counsel, hereby respectfully submit their unresolved objections to the declarations and exhibit lists submitted by the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) [Docket No. 7559-7560 in Case No. 17-bk-03283 and Docket Nos. 580-581 in Case No. 17-bk-03566] and the Committee of Retired Employees of the Commonwealth of Puerto Rico (the “Retiree Committee”) [Docket No. 7555 and 7652 in Case No. 17-bk-03283 and Docket No. 577 and 596 in Case No. 17-bk-03566].

1. Objection to the *Declaration of Luis Collazo Rodriguez in Support of ERS's Supplemental Brief in Support of Motion for Summary Judgment*, dated March 21, 2018 [Docket No. 198 in Case No. 17-ap-00213] (the “March 2018 Declaration”). Movants object to Paragraph 3 of the March 2018 Declaration. In that paragraph, Mr. Collazo states: “It is my understanding that Pay-Go was enacted to ensure funding for pension payments in light of ERS’s insolvency and the pension crisis facing Puerto Rico.” *Id.* ¶ 3. During discovery, however, Respondents asserted numerous privileges—including the deliberative process privilege, the

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the *Motion of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico for Relief from the Automatic Stay* [Docket No. 3418 in Case No. 17-bk-03283 and Docket No. 289 in Case No. 17-bk-03566].

executive privilege, and the attorney-client privilege—regarding questions as to why the Pay-Go system was enacted. *See, e.g.*, June 4, 2019 Dep. Of Luis Collazo, 88:5–16 (“Q. What was ERS’ understanding of why the decision was made to pay Pay-Go fees held by [sic: into an account held by] the Treasury Department instead of an account at held by the ERS? MR. POCHA: Objection. Privilege. I’m instructing you not to disclose attorney/client privilege or process privilege. A. It’s impossible to answer that question without having exposed some type of privilege that was already discussed. Deliberative process was already discussed.”). Given Respondents’ assertions of privilege, which severely hampered Movants’ discovery into the reasons for Respondents’ enactment of the Pay-Go system pursuant to Joint Resolution 188 and Act 106, any effort by Respondents to introduce evidence of the reasons for enacting the Pay-Go system would be unfairly prejudicial and an improper attempt to invoke numerous privileges as both a sword and a shield. *See, e.g., Greater Newburyport Clamshell All. v. Pub. Serv. Co. of New Hampshire*, 838 F.2d 13, 20 (1st Cir. 1988) (“a privileged party cannot fairly be permitted to disclose as much as he pleases and then to withhold the remainder to the detriment of the defendant”); *Rivera v. Kmart Corp.*, 190 F.R.D. 298, 304 (D.P.R. 2000) (parties are not permitted to use privilege “as both a sword and shield by selectively using the privileged documents to prove a point but then invoking the privilege to prevent an opponent from challenging the assertion”).

2. Objection to Exhibits. As of the date of this disclosure, Movants object to the introduction of the following exhibits into evidence at the final hearing:

Movants' Objections to Respondents' and Retiree Committee's Exhibits

Ex. No.	Document	Bates/Depo Ex	Objection
Movants' Objections to Respondents' Exhibits			
A.	ERS Second Supplemental Bond Resolution, dated May 27, 2008		No Objection
B.	ERS Third Supplemental Bond Resolution, dated June 26, 2008		No Objection
C.	Movants' Responses and Objections to Debtor's First Set of Interrogatories, dated March 8, 2019		No Objection
D.	Movants' Supplemental Responses and Objections to the Debtor's Interrogatory Numbers 5, 6, 8, and 9, dated April 15, 2019		No Objection
E.	Movants' Responses and Objections to the Oversight Board's First Set of Contention Interrogatories, dated May 24, 2019		No Objection
F.	Puerto Rico Government Employees Retirement System June 30, 2016 Actuarial Valuation Report	MALHOTRA00000008 - 80	No Objection
G.	Milliman letter re: PRGERS Estimated Projected Benefit Payments reflecting Act 106-2017 – CONFIDENTIAL, dated December 8, 2017	MALHOTRA00000003 - 7	No Objection

Ex. No.	Document	Bates/Depo Ex	Objection
H.	Milliman letter re: PRGERS Estimated Projected Benefit Payments reflecting Act 106-2017 – Agencies Covered by the Fiscal Plan Only - revised - CONFIDENTIAL, dated December 21, 2017	MALHOTRA0000098 - 109	No Objection
I.	Milliman letter re: PRGERS Estimated Benefit Projection Payments, dated April 4, 2019	MALHOTRA0000081	No Objection
J.	Commonwealth of Puerto Rico Certified Fiscal Plan, dated October 28, 2018		No Objection
K.	Mortality Improvement Scale MP-2018	MALHOTRA000185 - 210	Movants object to the introduction of this exhibit on the following grounds: <ul style="list-style-type: none"> • Not properly authenticated • Lacks foundation • Hearsay
L.	20 Year AA Municipal Bond Quarterly Rates	MALHOTRA000181 - 185	Movants object to the introduction of this exhibit on the following grounds: <ul style="list-style-type: none"> • Not properly authenticated • Lacks foundation • Hearsay • Not relevant.
M.	Bond Buyer 20-year monthly index of FRB_H15	MALHOTRA000180	Movants object to the introduction of this exhibit on the following grounds: <ul style="list-style-type: none"> • Not properly authenticated • Lacks foundation • Hearsay • Not Relevant
N.	PR Pension Bonds 2008 Series B Offering Statement		No Objection

Ex. No.	Document	Bates/Depo Ex	Objection
O.	PR Pension Bonds 2008 Series C Offering Statement		No Objection
P.	Proval export.xls		Movants object to the introduction of this exhibit on the following grounds: <ul style="list-style-type: none"> • Not properly authenticated • Lacks foundation • Hearsay
Q.	Demonstratives		Movants object to the introduction of this exhibit on the following grounds: <ul style="list-style-type: none"> • Improper evidence • Unfairly prejudicial • Hearsay • Rule 26
Movants' Objections to Retiree Committee's Exhibits			
RC A (Group Exhibit)	Banco Popular and GDB Puerto Rico Government Employees Account Statements	ERS_LS0002187 – 2197 ERS_LS0002570 ERS_LS0002875 – 2876 ERS_LS0003543 ERS_LS0003813	No Objection
RC B	FOMB Press Release, June 16, 2019		Movants object to the introduction of this exhibit on the following grounds: <ul style="list-style-type: none"> • Hearsay • Not Relevant
RC C	Plan Support Agreement, May 31, 2019		Movants object to the introduction of this exhibit on the following grounds: <ul style="list-style-type: none"> • Not properly authenticated • Lacks foundation • Not relevant.

Ex. No.	Document	Bates/Depo Ex	Objection
RC D (Demonstrative)	Chart Summarizing ERS Bond Debt Service		<p>Movants object to the introduction of this exhibit on the following grounds:</p> <ul style="list-style-type: none"> • Improper Evidence • Not properly authenticated • Lacks foundation • Hearsay • Original document rule / improper compilation.
RC E (Demonstrative)	Analysis Based on Malhotra0000179		<p>Movants object to the introduction of this exhibit on the following grounds:</p> <ul style="list-style-type: none"> • Improper Evidence • Not properly authenticated • Lacks foundation • Hearsay • Not Relevant • Original document rule / improper compilation

In San Juan, Puerto Rico, today June 27, 2019.

By:

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